

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JIM EARL KERN,

Defendant.

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CASE NO. 8:04CR148

**MEMORANDUM
AND ORDER**

This matter is before the court on defendant's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" (§ 2255 motion) (Filing No. 67), defendant's Motions to Withdraw Motion Under § 2255 (Filing Nos. 79 & 80), and defendant's Motion to Dismiss Motion to Vacate Sentence (Filing No. 83). In his Motion to Dismiss, defense counsel, Patrick Runge, states that after counsel and defendant discussed the basis for the § 2255 motion, the legal, factual, and procedural history of the case, and all the options available to defendant, defendant specifically directed counsel to file a dismissal of the Motion to Vacate Sentence. Therefore, the motion is granted and the defendant's § 2255 motion is dismissed without prejudice.

IT IS ORDERED:

1. That defendant's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" (§ 2255 motion) (Filing No. 67) is dismissed;
2. That defendant's Motions to Withdraw Motion Under § 2255 (Filing Nos. 79 & 80) are granted;
3. That defendant's Motion to Dismiss Motion to Vacate Sentence (Filing No. 83) is granted;
4. That the evidentiary hearing scheduled for 2:30 p.m. on September 25, 2006 is cancelled;

5. That a separate judgment will be entered; and
6. That the Clerk of Court is directed to send a copy of this Order to defendant at his last known address.

DATED this 23rd day of August, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge